

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Section 49452.8  
Statutes 2006, Chapter 413 (AB 1433)

Filed on September 25, 2007,

By San Diego Unified School District,  
Claimant.

Case No.: 07-TC-03

*Pupil Health: Oral Health Assessment*

STATEMENT OF DECISION  
PURSUANT TO GOVERNMENT  
CODE SECTION 17500 ET SEQ.;  
TITLE 2, CALIFORNIA CODE OF  
REGULATIONS, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7.

*(Adopted September 28, 2012)*

*(Served October 4, 2012)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on September 28, 2012. Arthur Palkowitz appeared on behalf of the claimant, San Diego Unified School District. Donna Ferebee and Lauren Carney appeared on behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission adopted the staff analysis to deny the test claim at the hearing by a vote of 7 to 0.

**Summary of the Findings**

In order for the test claim statute to impose a reimbursable state-mandated program, the statutory language must mandate school districts to perform a new program or higher level of service, resulting in districts incurring increased costs mandated by the state. Here, the test claim statute does impose mandated activities, but those activities are funded by a specific appropriation, in an amount sufficient to cover the costs of the mandated activities, pursuant to Government Code section 17556(e). There is no evidence of increased costs mandated by the state and, thus, reimbursement is not required. The Commission denied this test claim.

## COMMISSION FINDINGS

### Chronology

09/25/2007	Claimant filed the test claim with the Commission on State Mandates (Commission)
10/12/2007	Commission staff deemed the filing complete
11/09/2007	The Department of Finance (DOF) submitted written comments
07/20/2012	Commission staff issued the draft staff analysis for comment
09/12/2012	Commission staff issued the final staff analysis and proposed statement of decision

### I. Background

This test claim seeks reimbursement for costs incurred by school districts and county offices of education resulting from a 2006 test claim statute that added section 49452.8 to the Education Code to address the oral health assessment of first-year public school children.

In enacting the test claim statute, the Legislature declared that its purpose was to promote oral health in young children, by requiring an assessment to be conducted by a dental professional upon a child's first entry into public school.<sup>1</sup> The statute requires that children enrolling in kindergarten, or in first grade if not previously enrolled in kindergarten, shall present proof of having received an oral health assessment by a licensed dentist or other health professional, not more than 12 months before enrollment. Children whose parents or legal guardians indicate financial hardship, lack of access to a licensed dentist, or non-consent to the assessment are exempt from this requirement and may be granted a waiver. Either the assessment, or a waiver form, must be provided to the school district by May 31 of the year of enrollment. The statute requires public schools to notify the parents or legal guardians of the requirement, collect the completed assessments and waiver forms, and submit an annual report to the county office of education, as specified.<sup>2</sup>

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<sup>1</sup> The Legislature made the following findings: "(a) Oral health is integral to overall health; (b) Tooth decay is the most common chronic childhood disease, experienced by more than two-thirds of California's children and five times more common than asthma; (c) California's schoolchildren, ages 6 to 8, inclusive, experience oral disease at twice the rate of schoolchildren in other states; (d) Oral diseases are infectious, are not self-limiting, contribute to many lost school hours, negatively impact learning, interfere with eating, contribute to poor self-esteem, and can cause considerable pain; (e) Tooth decay is preventable." (Stats. 2006, ch. 413 (AB 1433), § 1.)

<sup>2</sup> Education Code section 49452.8, as added by Statutes 2006, chapter 413 (AB 1433), section 2.

Section 3 of Statutes 2006, chapter 413 provides that funds allocated to local educational agencies pursuant to Item 6110-268-0001 of the 2006 Budget Act shall first be used to offset any reimbursement for costs mandated by the state.

## **II. Positions of the Parties and Interested Parties**

### **A. Claimant's Position**

The claimant alleges that the test claim statute constitutes a reimbursable state-mandated program. The claimant requests reimbursement for the following new activities under the statute:

- (1) To train district staff in order to implement the mandated activities.
- (2) To review the requirements [of the statute] and any regulations relating to the *Pupil Health: Oral Health Assessment* mandate.
- (3) To prepare [and issue a letter], or other reasonable method of communication. The notification must consist, at a minimum, of a letter that includes all of the following:
  - (a) An explanation of the administrative requirements of Education Code section 49452.8.
  - (b) Information on the importance of primary teeth.
  - (c) Information on the importance of oral health to overall health and to learning.
  - (d) A toll-free telephone number to request application for Healthy Families, Medi-Cal, or other government-subsidized health insurance programs.
  - (e) Contact information for county public health departments.
  - (f) A statement of privacy applicable under state and federal laws and regulations.
- (4) To notify parents or legal guardians of pupils, enrolled in kindergarten or while enrolled in first grade if not previously enrolled in kindergarten, concerning the oral health assessment requirement.
- (5) To collect completed letters from the parents or legal guardians of kindergarten or first-grade pupils to ensure compliance with the oral health assessment requirements no later than May 31<sup>st</sup> of the school year.
- (6) To excuse parents or legal guardians who indicate on the letter that the oral health assessment could not be completed because one or more of the [reasons enumerated in subdivision (d), paragraph (2) is applicable].
- (7) To prepare and submit a report, by December 31 of each year, to the county office of education upon receipt of completed assessments. School districts must include in that report:

- (a) The total number of pupils in the district, by school, who are subject to the oral health assessment requirement (i.e., the number of kindergarten students plus the number of first grade students who did not attend public school kindergarten).
- (b) The total number of pupils who present proof of an assessment.
- (c) The total number of pupils who could not complete an assessment due to financial burden.
- (d) The total number of pupils who could not complete an assessment due to lack of access to a licensed dentist or other licensed or registered dental health professional.
- (e) The total number of pupils who could not complete an assessment because their parents or legal guardians did not consent to their child receiving the assessment.
- (f) The total number of pupils who are assessed and found to have untreated decay.
- (g) The total number of pupils who did not return either the assessment or the waiver request to the school.<sup>3</sup>

The claimant states that it distributed 9,872 Oral Health Assessment/Waiver forms to parents or legal guardians of children subject to the requirement in 2006/2007. The claimant states that 3,458 assessments were returned, and 397 waivers were collected.<sup>4</sup>

The claimant alleges that it incurred \$67,488 in increased costs between January 1, 2007 and December 30, 2007, pursuant to the new activities. That total cost estimate includes (1) \$1,442 to train district staff; (2) \$13,266 to implement the *Oral Health Assessment* program, distribute information and forms, answer questions, collect and input data, and prepare forms for the county office of education; (3) \$1,307 to prepare the letters to be sent to notify parents or guardians of the requirement (4) \$46,901 to distribute and collect assessment/waiver forms; and (5) \$4,571 to report compliance results and statistics to the county office of education.<sup>5</sup>

The claimant notes that the 2006-2007 Budget Act (the most recent budget act available at the time of filing this test claim) contained an appropriation for the program. The amount allocated for that budget year matched claimant's estimate of statewide costs. However, the claimant expresses concern that continuing funding for the program is at the discretion of the Legislature,

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<sup>3</sup> Exhibit A. Test Claim, p. 2.

<sup>4</sup> Exhibit A. Test Claim, p. 6.

<sup>5</sup> Exhibit A. Test Claim, pp. 6; 16.

and that the claimant should not be forced to resort to its Title I funding to cover any future shortfall should a budget appropriation not be made.<sup>6</sup>

#### B. Department of Finance's Position

DOF argues that because the activities mandated by the test claim statute were fully funded as of the date of filing, the Commission should not, and may not, find that the statute creates a reimbursable mandate. DOF states that Government Code section 17556(e) specifically prohibits the Commission from finding "costs mandated by the state," as defined in section 17514, where the costs incurred are provided for with offsetting savings or additional revenue in an amount sufficient to fund the mandate.<sup>7</sup>

### III. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service.

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."<sup>8</sup> Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] ..."<sup>9</sup>

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.<sup>10</sup>
2. The mandated activity either:
  - a. Carries out the governmental function of providing a service to the public; or
  - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.<sup>11</sup>

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<sup>6</sup> Exhibit A. Test Claim, pp. 7; 18.

<sup>7</sup> Exhibit B. Department of Finance Comments, p. 1.

<sup>8</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>9</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>10</sup> *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified School Dist.)* (2004) 33 Cal.4th 859, 874.

3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.<sup>12</sup>
4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.<sup>13</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>14</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>15</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>16</sup>

**A. The test claim statute does not impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution because the program has been funded and there is no evidence of school districts incurring increased costs mandated by the state.**

Education Code section 49452.8 requires school districts and county offices of education to perform the following activities:

- [N]otify the parent or legal guardian of a pupil described in subdivision (a) concerning the assessment requirement.<sup>17</sup>
- The notification shall include all of the following information:

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<sup>11</sup> *Id.* at 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

<sup>12</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>13</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

<sup>14</sup> *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487; Government Code section 17551 and 17552.

<sup>15</sup> *County of San Diego, supra*, 15 Cal.4th 68, 109.

<sup>16</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>17</sup> Education Code section 49452.8 (c), as added by Statutes 2006, chapter 413 (AB 1433), section 2.

- An explanation of the administrative requirements of this section.
- Information on the importance of primary teeth.
- Information on the importance of oral health to overall health and to learning.
- A toll free telephone number to request an application for Healthy Families, Medi-Cal, or other government-subsidized health insurance programs.
- Contact information for county public health departments.
- A statement of privacy applicable under state and federal laws and regulations.<sup>18</sup>
- Upon receiving completed assessments, all school districts shall, by December 31 of each year, submit a report to the county office of education of the county in which the school district is located.<sup>19</sup>
- The report shall include the following information:
  - The total number of pupils in the district, by school, who are subject to the requirement to present proof of having received an oral health assessment pursuant to subdivision (a).
  - The total number of pupils described in paragraph (1) who present proof of an assessment.
  - The total number of pupils described in paragraph (1) who could not complete an assessment due to financial burden.
  - The total number of pupils described in paragraph (1) who could not complete an assessment due to lack of access to a licensed dentist or other licensed or registered dental health professional.
  - The total number of pupils described in paragraph (1) who could not complete an assessment because their parents or legal guardians did not consent to their child receiving the assessment.
  - The total number of pupils described in paragraph (1) who are assessed and found to have untreated decay.
  - The total number of pupils described in paragraph (1) who did not return either the assessment form or the waiver request to the school.<sup>20</sup>

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<sup>18</sup> Education Code section 49452.8 (c) (1-6), as added by Statutes 2006, chapter 413 (AB 1433), section 2.

<sup>19</sup> Education Code section 49452.8 (e), as added by Statutes 2006, chapter 413 (AB 1433), section 2.

<sup>20</sup> Education Code section 49452.8 (e) (1-7), as added by Statutes 2006, chapter 413 (AB 1433), section 2.

- Each county office of education shall maintain the data described in subdivision (e) in a manner that allows the county office to release it upon request.<sup>21</sup>

These activities are new requirements, effective in the 2006-2007 school year, and were intended to provide a service to the public. As previously noted, the Legislature declared its findings in section 1 of the statute, including a finding that oral health is integral to overall health and well-being, that oral disease contributes to lost school hours and negatively impacts learning, and that tooth decay is preventable. The Legislature thereby signified its purpose, in enacting the Oral Health Assessment requirement, as it affects both parents and schools, to promote oral health in school children by ensuring that first-year public school children are screened for tooth decay.<sup>22</sup>

However, school districts and county offices of education have received funding for these activities in all fiscal years since 2006, and there is no evidence in the record that the claimant, or any other school district, has incurred increased costs mandated by the state beyond those budget appropriations.

Government Code section 17514 defines “costs mandated by the state” as any increased cost that a local agency is required to incur as a result of a statute that mandates a new program or higher level of service.” Government Code section 17556(e) provides that the Commission “shall not find costs mandated by the state,” if the Commission finds that:

- (e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

Here, DOF asserts, and the claimant acknowledges, that the program imposed by the test claim statute has been fully funded in the budget.<sup>23</sup> Section 3 of Statutes 2006, chapter 413 (AB 1433), provides that “[f]unds allocated to local educational agencies pursuant to Item 6110-268-0001 of Section 2.0 of the Budget Act of 2006...shall be used to offset any reimbursement to local educational agencies provided pursuant to [Government Code §17500 et seq].” Budget line item 6110-268-0001 provides for \$4,400,000 for the Oral Health Assessment program.<sup>24</sup>

The claimant’s estimate of statewide costs to local educational agencies exactly matches the funding appropriated.<sup>25</sup> And beginning in 2007, the Budget Act contained language specifically

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<sup>21</sup> Education Code section 49452.8 (f), as added by Statutes 2006, chapter 413 (AB 1433), section 2.

<sup>22</sup> Statutes 2006, chapter 413 (AB 1433), section 1.

<sup>23</sup> Exhibit B. Department of Finance Comments, p. 1.

<sup>24</sup> Statutes 2006, chapter 48 (AB 1811), section 43.

<sup>25</sup> See Exhibit A, Test Claim p. 18 [“In fiscal year 2007/08, the CDE expects eligible local educational agencies to receive approximately \$8.40/student enrolled in 1st grade. \$4,048,000

naming the Oral Health Assessment program in the appropriate line item. The language of the appropriation provides as follows:

The funds appropriated in this item shall be considered *offsetting revenues within the meaning of subdivision (e) of section 17556 of the government code* for any reimbursable mandated cost claim for child oral health assessments. Local educational agencies accepting funding from this item shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from this item.<sup>26</sup>

Government Code section 17556(e) applies to limit the Commission’s findings where there are offsetting revenues specifically intended to fund the mandate. Those offsetting revenues may be authorized in the statute, or in a Budget Act or other bill, and must result in no net costs to the claimant. If available funding does not result in zero net costs, the test claim may still succeed, and the funding would be treated only as an offset. But here, the monies allocated are specifically intended to fund the mandate, and the claimant’s own statewide cost estimate exactly matches the appropriation made. Therefore the exception in section 17556(e) applies, and there is no evidence of “costs mandated by the state,” within the meaning of section 17514.

Claimant argues that the Commission should still find that the statute imposes a reimbursable state-mandated program, due to fears that someday the Legislature might not fund the program.<sup>27</sup> Specifically, the test claim and the declaration of Jennifer Gorman, Nursing and Wellness Program Manager at San Diego Unified School District, suggest that future appropriations are “not guaranteed.”<sup>28</sup> However, the claimant’s concern over the possibility of lost funding in the future, resulting in unspecified potential costs, is not sufficient to allege reimbursable costs mandated by the state. Government Code section 17564 states that no claim shall be made unless the claim results in costs exceeding \$1,000. If the Legislature were to discontinue funding the program, resulting in districts incurring costs of at least \$1,000, then a test claim could be filed pursuant to Government Code section 17551(c) within one year of first incurring costs alleging an unfunded mandate. Until that time, however, there is no evidence of school districts incurring costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

A review of recent Budget Acts from 2006-2007 through 2012-2013 reveals that the funding of the mandate, at line item 6110-268-0001, has continued, despite the claimant’s fears. The line

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will be allocated to local educational agencies based on 2006 CBEDS enrollment for first grade. \$352,000 will be allocated to County Offices of Education for data storage and retrieval.”]; p. 2 [“The statewide cost estimate of increased costs incurred by this legislation would be \$4,048,000.”].

<sup>26</sup> Statutes 2007, chapter 171 (SB 77), Budget Line Item 6110-268-0001 [emphasis added].

<sup>27</sup> Exhibit A. Test Claim, p. 18.

<sup>28</sup> *Id.*

item appearing in the 2006-2007 and 2007-2008 budgets, which specifically referred to the Oral Health Assessment program, reappears in subsequent enactments for 2008-2009, 2009-2010, 2010-2011 and 2011-2012. Each of those budgets contains the same \$4,400,000 appropriation at line item 6110-268-0001, and each states that “[t]he funds appropriated in this item shall be considered offsetting revenues within the meaning of subdivision (e) of Section 17556 of the Government Code.” It is telling that the Budget Acts specifically refer to the offsetting revenue exception of section 17556(e), presumably with the intent to undermine a test claim such as the one filed here. Thus the mandate is specifically funded within the meaning of section 17556(e), up to the 2012-2013 budget year.<sup>29</sup>

In the 2012-2013 budget year, the line item reappears, but the funding has been reduced by approximately 21%.<sup>30</sup> Whatever the significance of this reduction, claimant has not shown any independent basis for the original 2007 statewide cost estimate of \$4,048,000, nor issued any comments providing an updated statewide cost estimate or any evidence or accounting of increased costs mandated by the state in the intervening years. Without more, there is no evidence in the record that the reduced budget allocation is not sufficient to fund the costs of the mandated program for the 2012-2013 fiscal year and beyond.

Thus, the Commission finds that Budget Act appropriations have provided additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the costs of the state mandate within the meaning of Government Code section 17556(e), and that there is no evidence of increased costs mandated by the state.

#### **IV. Conclusion**

Based on the foregoing, the Commission finds that Education Code section 49452.8, as added by Statutes 2006, chapter 413, does not impose a reimbursable state-mandated program upon school districts or county offices of education within the meaning of article XIII B, section 6 of the California Constitution.

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<sup>29</sup> Statutes 2008, chapter 268 (AB 1781): Item 6110-268-0001; Statutes 2009, Fourth Extraordinary Session, chapter 1 (ABX4 1), section 458: Item 6110-268-0001; Statutes 2010, chapter 712 (SB 870), section 2.00: Item 6110-268-0001; Statutes 2011, chapter 33 (SB 87): Item 6110-268-0001.

<sup>30</sup> Statutes 2012, chapter 21 (AB 1464); Statutes 2012, chapter 29 (AB 1497, filed June 27, 2012).

**COMMISSION ON STATE MANDATES**

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**RE: Adopted Statement of Decision**

*Pupil Health: Oral Health Assessment, 07-TC-03*  
Education Code Section 49452.8  
Statutes 2006, Chapter 413 (AB 1433)  
San Diego Unified School District, Claimant

On September 28, 2012, the foregoing statement of decision of the Commission on State Mandates was adopted in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Heather Halsey", written over a horizontal line.

Heather Halsey, Executive Director

Dated: October 4, 2012